

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

V.

ORLANDO ROSA RODRIGUEZ

Defendant

CRIM. NO. 98-009 (SEC)
DEFENDANT #10

**MOTION FOR NUNC PRO TUNC AMENDMENT OF
JUDGMENT IMPOSED ON MAY 21, 2002**

TO THE HONORABLE COURT:

Now comes the above-captioned defendant through his undersigned counsel and respectfully states and prays as follows:

1. On May 14, 1999, in Criminal Number 97-082-36 (SEC) the appearing defendant was sentenced to 292 months for count one and 240 months for count two to be served concurrently. Hon. Judge Salvador Casellas also added to the "imprisonment" section at page two of the judgment that, "concurrently with sentence to be imposed in Cr. Case No. 98-009 by Hon. Carmen C. Cerezo. See Judge Casellas's sentence attached hereto as Exhibit 1 to this Motion.

2. On august 11, 1998 the appearing defendant sought from this Honorable court that the captioned case be consolidated with Case No. 97-82 (SEC) such request was granted on August 20, 1998. See a copy of the motion and its margin order attached hereto as Exhibit 2 (Docket 132).

3. On May 21, 2002 this Honorable court in the captioned case sentenced the appearing defendant to 120 months to be served concurrently with the sentence imposed in Criminal No. 97-082 by the Honorable Salvador E. Casellas. See a copy of said judgment, attached hereto as Exhibit 3 to this Motion (Docket #551).

4. As per various telephone conferences and a personal conference with Mr. José Cabán, MDC-Guaynabo's Inmate Systems Manager on August 9, 2005, the appearing defendant's imprisonment time computation by the U. S. Bureau of Prisons started on May 21, 2002, the date he was sentenced in the captioned case. Mr. Cabán stated to the defendant and later to the undersigned that the time he has been in federal custody from the time Judge Casellas sentenced him on May 14, 1999, to wit, two years and two hundred fifty eight days, is not counted because the sentence imposed in this case (98-009-10 (CCC), although specifically ordered to be served concurrently with Judge Casellas's sentence, cannot be so computed if it does not specify that the concurrency ordered be "nunc pro tunc".

5. Mr. Cabán further stated that administratively, he nor the BOP could not do anything because the sentence does not make a nunc pro tunc indication regarding the concurrency together with the sentence in Criminal Number 97-082 (SEC)

6. The appearing defendant respectfully submits that the agreement with the prosecution for the concurrency of all sentences, and

the Judgments in both cases cited herein specifically ordering that both be served concurrently, have the intent and language ordering that Mr. Rosa Rodriguez be credited for the time he has been in federal custody since he was sentenced by Judge Casellas on May 14, 1999.

7. In light of the above, within the contents and the spirit of the literal language of both sentences calling for concurrency with each other, and in the spirit of the consolidation of both cases ordered by this Honorable Court, Mr. Rosa Rodríguez respectfully prays that the Honorable Court issue an order to amend its May 21, 2002 (entered July 9, 2002) judgment in the captioned case so that its issuance and effectiveness regarding the concurrency with Cr. No. 97-082 (SEC) be made “nunc pro tunc” to May 14, 1999, the date of imposition of sentence in Cr. No. 97-082 by Hon. Salvador E. Casellas, SUSDJ.

WHEREFORE, pursuant to the spirit and contents of Rules 2 and 36 of the Federal rules of Criminal Procedure, and in the interest of justice and the defendant’s right to due process of law and assistance of counsel under the Fifth and Sixth Amendments to the United States constitution, he very respectfully prays that the request made herein be granted.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico this 10th day of August 2005.

I HEREBY CERTIFY THAT ON THIS SAME DAY THIS MOTION HAS
BEEN ELECTRONICALLY FILED THROUGH THE ECF SYSTEM WITH THE
CLERK OF THE COURT.

S/ FRANK D. INSERTI MILAM

FRANK D. INSERTI MILAM

USDC-PR 127807

P O BOX 193748, HATO REY PR 00919-3748

TELEPHONES (787)-759-7572/763-3851/FAX: 787-763-5223

E-mail: finserni@prtc.net

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